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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 225

LEWIS A. JOHNSON, ALIAS LEWIS O. KALAP,
PETITIONER

v.

W. BRUCE MATTHEWS, UNITED STATES MARSHAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The majority (R. 21-33) and dissenting (R. 33-37) opinions in the Court of Appeals are not yet reported. No opinion was filed in the District Court.

JURISDICTION

The judgment of the Court of Appeals was entered on May 1, 1950 (R. 38). The petition for a

writ of certiorari was filed on July 28, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, after issuance of a warrant of extradition, a court in the asylum jurisdiction is required, on petition for writ of habeas corpus, to hear and determine contentions that officers of the demanding state subjected the prisoner to severe physical abuse prior to his escape from detention in that state.

STATUTE INVOLVED

18 U.S.C. 3182 provides:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent

appears within thirty days from the time of the arrest, the prisoner may be discharged.

STATEMENT

On July 7, 1949, Judge Bailey as the Chief Judge of the United States District Court for the District of Columbia [1] ordered that petitioner be extradited to Georgia for trial on a charge of robbery (R. 4, 13). On the same day and in the same court petitioner filed a petition for habeas corpus against the United States Marshal holding him in custody, alleging, *inter alia,* that after his arrest at Ocilla, Georgia on January 5, 1948, he remained in jail without preliminary hearing, indictment,[2] or trial until November 3, 1948, when he escaped; that during his incarceration three terms of court passed without his trial; that during this period state officials made attempts to obtain $2500 from his wife, allegedly to recompense the complaining witness in the robbery charge; that while so held he was the

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[1] 23 D.C. Code (1940 ed.) 401 provides:

"In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the Chief Justice of the District Court of the United States for the District of Columbia shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several States are required to do by the provisions of [18 U.S.C. 3182] * * *."

[2] The majority opinion of the Court of Appeals states: "This allegation [that petitioner was not indicted] was false on the face of the papers. He was arrested January 5, 1948. A certified copy of an indictment returned against him on February 16, 1948, is among the extradition papers" (R. 21, footnote 1).

"victim of cruel, barbaric, and inhuman treatment, in that, he was most severely beaten, starved, denied clothing or bedding by his jailors, this placing his life and health in grave jeopardy"; and that the treatment he received violated the 14th Amendment of the United States Constitution and Sections 2-103 and 2-105 of the Georgia Constitution [3] (R. 13-14).

The district court forthwith issued the writ (R. 15). On the return day, counsel for petitioner offered to prove the allegations of the petition by testimony of the petitioner and one corroborative witness, together with four letters, which were described as relevant only to the issue whether state officials had sought to obtain $2500 from petitioner or his wife (R. 7). During argument counsel for petitioner first admitted that if petitioner were extradited to Georgia, he would have access to the federal courts there, which would be competent to try and determine the allegations of the petition.[4] He later sought to qualify that admission by suggesting that petitioner's poverty might preclude such access, but he made no contention that state officials would do anything to impair petitioner's right of access to state or federal courts in Georgia on writ of habeas corpus to test any asserted violation of

[3] These sections of the Georgia Constitution are similar to the Fifth and Sixth Amendments of the United States Constitution (see R. 3).

[4] "The COURT. If he wants recourse to Federal Court can't he have it there?

"Mr. SHAPIRO. Yes, Your Honor, he can." (R. 8)

constitutional rights.[5] The district court accordingly, without taking evidence, ordered the writ discharged and the petition dismissed, stating that "the petitioner is held under due extradition process, and . . . the constitutional questions raised by him can be properly asserted in the courts of the State of Georgia, or, if necessary, in the Federal Courts of that jurisdiction." (R. 17.)

On appeal (R. 19) this judgment was affirmed (R. 38). The majority (R. 21-33) held that the district court, sitting in the asylum jurisdiction, should not hear and determine questions as to the

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[5] "The COURT. If he has rights which ought to be protected by a Federal Court, and which he has access to and as you say should have access to, why can't he have access to the Court?

"Mr. SHAPIRO. He should; I definitely agree with Your Honor that he should, if we can keep him from the custody of the State courts. I don't say that we should not return him back to Georgia if we can get him an immediate hearing before the Federal jurisdiction there.

"The COURT. You know perfectly well if he is taken back to the State of Georgia under this writ of extradition which Judge Bailey issued he can apply for a writ of habeas corpus in a Federal Court there, and the fact that he is in custody is not going to keep him from applying.

"Mr. SHAPIRO. Except for one thing: The man is proverty stricken, Your Honor.

"The COURT. He can go in in forma pauperis.

"Mr. SHAPIRO. That's true but will he be given opportunity to do so, Your Honor?

"The COURT. Well, somebody on his behalf can certainly do it. Lots of writs of habeas corpus are filed before a man is brought into court. That is the object of the writ.

"Mr. SHAPIRO. Is Your Honor ruling that he won't hear this?

"The COURT. I am not ruling at all; I am asking you on what basis you are asking me to make the ruling?

"Mr. SHAPIRO. I have given you all I have to say." (R. 9-10).

constitutional validity of petitioner's penal treatment by Georgia as the demanding state. Judge Bazelon, dissenting (R. 33-37), thought that evidence should have been taken on the question whether petitioner had suffered cruel and unusual punishment and "would be reasonably likely to undergo similar abuse if he were returned to Georgia." (R. 37)

DISCUSSION

The range of inquiry open in extradition matters to a court in the asylum jurisdiction on petition for habeas corpus has traditionally been very limited. The court can determine whether the detaining papers are in proper form (*Compton* v. *Alabama,* 214 U. S. 1, 6; *Roberts* v. *Reilly,* 116 U. S. 80, 95), whether they disclose that a crime has been charged in the demanding state (*In the Matter of Strauss,* 197 U. S. 324, 329-331; *Ex parte Reggel,* 114 U. S. 642, 649), whether the party sought to be extradited was present in the demanding state at the time the crime is alleged to have been committed (*Biddinger* v. *Commissioner of Police,* 245 U. S. 128, 135; *Hyatt* v. *Corkran,* 188 U. S. 691, 711-713, 719), and whether he is the same person who is charged with the crime (*Raftery ex rel. Huie Fong* v. *Bligh,* 55 F. 2d 189, 193 (C. A. 1); *United States ex rel. Austin* v. *Williams,* 12 F. 2d 66, 67 (C. A. 5)). However, the court cannot con-

sider defenses generally,[6] insanity of the accused (*Drew* v. *Thaw*, 235 U. S. 432, 439-440), the statute of limitations (*Biddinger* v. *Commissioner of Police, supra*, 245 U. S. at 134-135; *Pelley* v. *Colpoys*, 122 F. 2d 12, 14-15 (C. A. D. C.), certiorari denied, 314 U. S. 622), an alibi (*Munsey* v. *Clough*, 196 U. S. 364, 375), the guilt or innocence of the accused (*South Carolina* v. *Bailey*, 289 U. S. 412, 420; *Munsey* v. *Clough, supra*, 196 U. S. at 375), former jeopardy (*In re Bloch*, 87 Fed. 981, 984 (W. D. Ark.), the motives behind the extradition proceedings (*Pelley* v. *Colpoys, supra*, 122 F. 2d at 14; *Person* v. *Morrow*, 108 F. 2d 838, 840 (C. A. 10)), and equitable considerations raised in bar of prosecution in the demanding state. *Reed* v. *Colpoys*, 99 F. 2d 396, 399 (C. A. D. C.), certiorari denied, 305 U. S. 598. Nor can the court inquire into the constitutionality of the statute under which the accused is charged (*Pearce* v. *Texas*, 155 U. S. 311, 314; *Collins* v. *Traeger*, 27 F. 2d 842, 846 (C. A. 9)), or of the grand jury which indicted him. (*Hale* v. *Crawford*, 65 F. 2d 739, 741-744 (C. A. 1), certiorari denied, 290 U. S. 674).

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[6] *Biddinger* v. *Commissioner of Police, supra*, 245 U.S. at 135:

"This much, however, the decisions of this court make clear * * * frequently and emphatically, that defenses cannot be entertained on such a hearing, but must be referred for investigation to the trial of the case in the courts of the demanding State."

These cases clearly established the rule, stated by the majority below, that the petition for habeas corpus tests only the validity of the detention in the asylum state and "does not test the validity of the original or contemplated incarceration in the demanding state" (R. 23). In *Johnson* v. *Dye*, 175 F. 2d 250, reversed, 338 U. S. 864, the Court of Appeals for the Third Circuit, sitting *en banc*, announced an exception to this rule. Finding, on the evidence presented in that case, that the petitioner had been "subjected to cruel and unusual punishment following his conviction" (p. 255), it held that such a finding required the release of the prisoner, stating that "the obligation of a State to treat its convicts with decency and humanity is an absolute one and a federal court will not overlook a breach of that duty" (p. 256). The concurring judge rested decision on the narrower ground that the record indicated that the petitioner had not only suffered past cruelty but also faced "grave and imminent danger of like abuse and very possibly even death by extra-legal means, if he is returned to Georgia" (p. 258).[7]

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[7] In *U. S. ex rel. Jackson* v. *Ruthazer*, 181 F. 2d 588, the Court of Appeals for the Second Circuit found it unnecessary to indicate its agreement or disagreement with *Johnson* v. *Dye* because it held that the petitioner had had a full and fair hearing in the state courts of New York at which it was determined that his contentions of brutal treatment by officers of the State of Georgia were unfounded. Accordingly, it held that the petitioner was not entitled to a rehearing of these contentions in the federal courts. In *U. S. ex rel. Brown* v. *Cooke*, 209 Fed. 607, 608, dismissed, 238 U.S. 613, the Court of

The majority opinion below expressly disapproves of the decision in *Johnson* v. *Dye* (R. 33), and there is no doubt that the opinions in the two cases are inconsistent in principle. The force of *Johnson* v. *Dye* as a precedent is, however, questionable in view of this Court's summary reversal of the decision. In its *per curiam* memorandum this Court cited only *Ex parte Hawk,* 321 U. S. 114. The basis of its reversal was thus presumably that since petitioner had not exhausted available state court remedies, his application to the federal court was premature. The opinion did not indicate whether the state court remedies which must be exhausted were limited to those in Pennsylvania, the asylum state, or included those in Georgia, the demanding state.[8] The Court of Appeals for the Second Circuit in *U. S. ex rel. Jackson* v. *Ruthazer,* 181 F. 2d 588, and the dissenting judge below, have construed this Court's

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Appeals for the Third Circuit had previously expressed a view opposed to that later adopted in *Johnson* v. *Dye,* stating that arguments that the relator "is not likely to have a fair trial —and probably will not have a trial at all—in the courts of the demanding state" could not be considered. It added, however, that the petitioner's contentions were met in any event by explicit assurances given by representatives of the demanding state.

[8] In the briefs before this Court in *Johnson* v. *Dye,* both contentions had been made. Counsel for the State of Pennsylvania contended that, in view of the petitioner's failure to make appropriate application to the Supreme Court of that state, his application to the federal court in Pennsylvania was premature. The State of Georgia, appearing *amicus curiae,* contended that there must also be an exhaustion of state court remedies in Georgia, or a showing that such remedies were unavailable.

opinion as resting the reversal solely on the ground of the failure to exhaust available remedies in the Pennsylvania state courts.[9] On the other hand, the majority below regarded this Court's reversal of *Johnson* v. *Dye* as resting also on the availability of appropriate remedies in the state courts of Georgia, which thus removed the necessity of intervention by any federal court at this stage.

The present case differs significantly from *Johnson* v. *Dye* on its facts. In *Johnson* v. *Dye,* the petition for habeas corpus alleged that the petitioner, a Negro, feared that in the event of his return to Georgia, he would "meet his death by mob violence or be so brutalized and tortured by his jailors that he [would] succumb" (Record in No. 332, October Term, 1949, p. 5). In support of that allegation he introduced testimony of a large number of escaped Georgia convicts with respect to alleged brutality of treatment by Georgia of its prisoners and especially of Negro prisoners. The showing made was such that in the view of the concurring judge it would have been "ingenuous" to assume that upon the petitioner's return to Georgia his constitutional rights, including his right of access to state or federal courts in Georgia to vindicate those rights, would be respected by the Georgia

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[9] Since the present case arises in the District of Columbia, no question of exhaustion of state court remedies in the asylum jurisdiction is presented.

authorities (175 F. 2d at 258). In the present case the petition for habeas corpus makes no assertion that petitioner's right of access to state or federal courts in Georgia will be impaired if he is extradited, and indeed his counsel not only made no such contention before the district court, but in effect admitted that the only impediment to such access would be the petitioner's poverty.

In *Ex parte Hawk, supra,* this Court reiterated the rule that federal courts "will interfere with the administration of justice in the state courts only 'in rare cases where exceptional circumstances of peculiar urgency are shown to exist' " (321 U. S. at 117). It pointed out that such exceptional cases might arise where the state either failed to afford a remedy or where the remedy afforded proved in practice unavailable or seriously inadequate (321 U. S. at 118).[10] This rule rests on the view that the jurisdiction of a federal district court to condemn a "state's system for the administration of justice . . . as constitutionally inadequate" (*Darr* v. *Burford,* 339 U. S. 200, 217) should, as a matter of comity and orderly judicial administration, be exercised only where it is clear

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[10] Cf. 28 U. S. C. 2254, allowing federal court intervention by habeas corpus where there has been either exhaustion of state remedies or "an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner."

that the petitioner would otherwise be remediless. Although evolved in connection with applications to a federal court sitting in the state whose administration of justice is attacked, it applies *a fortiori* to the question here presented whether a federal court sitting in the asylum jurisdiction should inquire into the constitutional adequacy of the administration of justice in the demanding jurisdiction. The strong reasons of comity and convenience which require that ordinarily such issues be left to the state courts, and if necessary the federal courts, in the demanding state are set forth in the majority opinion below.

On its facts (and apart from the question of the exhaustion of remedies in the Pennsylvania state courts) *Johnson* v. *Dye* raised the issue whether a substantial showing that the prisoner, should he be returned to the demanding state, would be effectively denied access to any court in that state constitutes the exceptional case which warrants intervention by a federal court. Cf. *Moore* v. *Dempsey,* 261 U. S. 86. If the present case raised that issue, a serious question would be presented. But we think it clear on the present record that no question of the nonavailability of adequate remedies in Georgia was raised in the courts below. Since the force of the opinion in *Johnson* v. *Dye* as a precedent has been impaired by this Court's reversal of that decision, and since the result of

the present case is clearly in accord with settled principles, we believe that this Court would be justified in denying the petition.

Respectfully submitted,

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